EXHIBIT B



Document 2338-2

Via Email

Lori G. Cohen, Esq. Gregory E. Ostfeld, Esq. Greenberg Traurig LLP Terminus 200 Building 3333 Piedmont Road NE, 25th Floor Atlanta, GA 30305

Jessica Davidson Skadden, Arps, Slate, Meagher & Flom LLP 1440 New York Ave., N.W. Washington, D.C. 20005

Allison M. Brown Skadden, Arps, Slate, Meagher & Flom LLP One Manhattan West New York, NY 10001-8602

April 10, 2023

Clem Trischler, Esq. Pietragallo, Gordon, Alfano Bosick & Raspanti, LLP One Oxford Centre, 38th Floor Pittsburgh, PA 15219

Sarah Johnston Barnes & Thornburg LLP 2029 Century Park East, Suite 300 Los Angeles, CA 90067

Jeffrey D. Geoppinger Ulmer & Berne LLP 312 Walnut St., Suite 1400 Cincinnati, OH 45202

Re: In re Valsartan, Losartan, & Irbesartan Prods. Liab. Litig., 19-md-2875 (D.N.J.)

Dear DEC Counsel:

We respond herein to your April 5, 2023 letter concerning our meet-and-confer call of April 3, 2023. While the items in your letter accurately catalogue our discussion (and we include our responses to each item below), your letter omits Defendants' stated position that they cannot make any proposal on how any trial whatsoever could proceed absent Court guidance. Judge Kugler specifically stated his intention to talk through, with the parties, "the exact case we're going to try and the parameters of the exact case we're going to try as a class case" during the March CMC. 3/29/23 Tr. at 25:6-9; 17:8-12; 26:1-4. Please let us know if you have changed your position.

Plaintiffs' position is based on the Court's prior guidance, taking into account the broad discretion, particularly of MDL courts, when it comes to trial management. While Plaintiffs believe that it would be fully appropriate and manageable to try broader sets of claims in accordance with the state law groupings presented at class certification (to be modified per the Court's class certification order), out of deference to the Court's prior guidance, Plaintiffs propose that the first trial be brought on behalf of the same parties that Plaintiffs and Defendants were working up for trial when class certification was granted. That is, the named parties would remain MSP vis-à-vis its two assignors EmblemHealth and SummaCare, and the Defendants would be ZHP, Teva, and Torrent. The trial would include the following certified TPP

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subclasses or such fewer subclasses or claims as the Court may direct, each of which include MSP vis-àvis its assignors EmblemHealth and SummaCare:

- TPP Breach of Express Warranty Subclass Group b¹
- TPP Breach of Implied Warranty Subclass Group d²
- TPP Fraud Subclass Group c³
- TPP State Consumer Protection Laws Subclass Group a⁴

We believe proceeding in this fashion will permit the parties and the Court to focus their efforts efficiently and largely on the same terms that the parties had been preparing for trial earlier.

We respond to each of the items enumerated in your letter below.

- 1. **Rule 702 Briefing.** We agree with your recitation of this item.
- 2. <u>Class Representative Discovery.</u> We agree MSP will continue its rolling production and complete it on or before May 3, 2023. We are not sure what, if any, discovery is necessary or appropriate from MADA, but Plaintiffs are willing to reserve their objections until Defendants' submission of supplemental document requests by May 10, 2023.

¹ A breach of express warranty subclass of all TPPs that, from at least January 1, 2012 through the date of final recall as of November 10, 2021, paid any amount of money in Alabama, Arkansas, Florida, Georgia, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New York, North Carolina, Ohio, Oregon, Rhode Island, South Carolina, Texas, Utah, Vermont, Wisconsin, or Wyoming for a valsartan-containing drug (intended for personal or household use) that was manufactured by [ZHP, Teva, or Torrent].

² A breach of implied warranty subclass of all TPPs that, from at least January 1, 2012 through the date of final recall as of November 10, 2021, paid any amount of money in Alabama, Ohio, Oregon, New York, Tennessee, Utah, or Vermont for a valsartan-containing drug (intended for personal or household use) that was manufactured by [ZHP, Teva, or Torrent].

³ A fraud class of all TPPs, from at least January 1, 2012 through the date of final recall as of November 10, 2021, paid any amount of money in Alaska, Arkansas, Colorado, District of Columbia, Florida, Idaho, Iowa, Louisiana, Massachusetts, Minnesota, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Vermont, Virginia, Washington, Wyoming, or Puerto Rico for a valsartan-containing drug (intended for personal or household use) that was manufactured by [ZHP, Teva, or Torrent].

⁴ A violation of state consumer protection laws subclass of all TPPs that, from at least January 1, 2012 through the date of final recall as of November 10, 2021, paid any amount of money in Alaska, Arizona, California, Connecticut, Florida, Hawaii, Illinois, Louisiana, Missouri, Nebraska, New Hampshire, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, or Washington that was manufactured by [ZHP, Teva, or Torrent].

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- 3. <u>Class Notice Program.</u> We agree with your recitation of this item with the goal of Plaintiffs' submitting their proposed class notice plan and form of notice to the Court by May 10, 2023.
- 4. Wholesaler Discovery. As discussed, Plaintiffs seek the "price and profit" discovery Magistrate Judge Schneider earlier denied without prejudice (see 7/7/2020 Order, ECF 507), specifically, the gross and net prices paid by Wholesalers, and in turn the gross and net prices paid by Wholesalers' customers, for VCDs. See id. Also, because initial discovery from Wholesalers was extremely focused on only certain "sufficient to show" non-custodial documents, Plaintiffs also intend to seek custodial discovery from Wholesalers, using the same or largely the same search terms negotiated with Manufacturer Defendants and approved by Magistrate Judge Schneider.

Plaintiffs disagree that forthcoming productions should be limited to the first trial scope. These productions should be all encompassing for use in all future trials. Plaintiffs will likely require Rule 30(b)(6) depositions with regard to the supplemental data productions. Plaintiffs also believe the parties should confer about custodial discovery (documents and individual depositions) of Wholesalers, including search terms and custodians, with the parties to set forth their positions on same in joint or simultaneous submissions by May 10, 2023. Plaintiffs disagree that Wholesalers are entitled to any additional fact discovery of Plaintiffs. Wholesalers fully participated in fact discovery of Plaintiffs, such as propounding written discovery and attending depositions. General fact discovery closed over a year ago.

5. Retailer Discovery. As discussed, Plaintiffs seek the "profit" data that Magistrate Judge Schneider earlier denied without prejudice (see 7/7/2020 Order, ECF 507), specifically, the prices paid by TPPs, as well as the gross and net prices paid by Retailers for VCDs. See id. Also, because initial discovery from Retailers was extremely focused on only certain "sufficient to show" noncustodial documents, Plaintiffs also intend to seek custodial discovery from Retailers, using the same or largely the same search terms negotiated with Manufacturer Defendants and approved by Magistrate Judge Schneider. Finally, Plaintiffs seek sufficient information to identify individual class members (e.g., names, addresses, etc.) for purposes of effectuating class notice.

Plaintiffs disagree that forthcoming productions should be limited to the first trial scope. These productions should be all encompassing for use in all future trials. Plaintiffs will likely require Rule 30(b)(6) depositions with regard to the supplemental data productions. Plaintiffs also believe the parties should confer about custodial discovery (documents and individual depositions) of Retailers, including search terms and custodians, with the parties to set forth their positions on same in joint or simultaneous submissions by May 10, 2023. Plaintiffs disagree that Retailers are entitled to any additional fact discovery of Plaintiffs.

In your letter, Retailers asked about expert-related discovery. Aside from damages, liability/merits expert discovery may be appropriate as to Plaintiffs' claims against Retailers (and Wholesalers).

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Plaintiffs believe the schedule for same can be addressed with the Court at the appropriate juncture prior to trial.

- 6. <u>Losartan and Irbesartan Discovery.</u> Plaintiffs will provide separately their initial discovery requests relating to losartan and irbesartan, as well as their proposed schedule.
- 7. <u>Damages Expert Reports and Depositions.</u> As discussed, Plaintiffs' existing liability damages report already provides specific break-downs for MSP's two assignors, EmblemHealth and SummaCare, and the certified subclasses as a whole. Therefore, we disagree there needs to be yet another round of damages expert reports. Defendants should promptly depose Dr. Conti on her current report (which Defendants have had for months); submit their own damages expert report that responds to Dr. Conti's current report; Defendants' expert can be deposed; and the parties can file *Daubert* briefing if necessary.

Let us know if you have any questions.

Respectfully,

Ruben Honik Honik LLC

1515 Market Street, Suite 1100

Philadelphia, PA 19102

Tel: 267-435-1300 ruben@honiklaw.com

cc: Valsartan PEC Counsel (via email)